Office - Supreme Court, U.S.
FILED
MAY 23 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1675

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PAKISTAN NATIONAL SHIPPING CORP.,

Petitioner,

—against—

MOUNT ROYAL MARINE REPAIRS, LTD., ALUMINUM COMPANY OF CANADA, LIMITED and EMPIRE STEVEDORING COMPANY, LTD.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THIRD-PARTY RESPONDENT EMPIRE STEVEDORING COMPANY, LTD. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VICTOR S. CICHANOWICZ
CICHANOWICZ, CALLAN, CARCICH and KEANE
Counsel for Respondent Empire Stevedoring Company, Ltd.
80 Broad Street
New York, New York 10004
(212) 344-7042

Of Counsel

MICHAEL J. CARCICH
CICHANOWICZ CALLAN CARCICH & KEANE

8 pp

TABLE OF CONTENTS

PAGE

OPINIONS BELOW 1

JURISDICTION 1

QUESTIONS PRESENTED 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT 2

ARGUMENT:

I.—There is no disaccord as to whether Federal or State standards govern the Constitutional limits of in personam jurisdiction in Federal question cases 3

II—There was never any finding that New York's long arm statute was unconstitutional 4

CONCLUSION 5

TABLE OF AUTHORITIES

Cases:

De James v. *Magnificence Carriers, Inc.*, 654 F.2d 280 (3rd Cir.) *cert. denied*, 454 U.S. 1085 (1981) 3

Hedrick v. *Daiko Shoji Co., Ltd., Osaka*, 715 F.2d 1355 (9th Cir. 1983) 3

Leasco Data Processing Equipment Corp. v. *Maxwell*, 468 F.2d 1326 (2d Cir. 1972) 4

Martinez v. *American Standard*, 91 A.D.2d 652, 457 N.Y.S. 2d 97 (2d Dep't 1982), aff'd 60 N.Y.2d 873, 458 N.E. 2d 826, 470 N.Y.S.2d 367 (1983) 5

Trans-Asiatic Oil Ltd., S.A. v. *Apex Oil Company*, 743 F. 2d 956 (1st Cir. 1984) 4

Statutes and Rules:

Securities Exchange Act, Sec. 27 4
New York Civil Practice Law and Rules, §302 2
New York Civil Practice Law and Rules, §302(a)(3)(ii) 3
Federal Rules of Civil Procedure, Rule B 4

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1984
No. 84-1675

PAKISTAN NATIONAL SHIPPING CORP.,

Petitioner,

—against—

MOUNT ROYAL MARINE REPAIRS, LTD., ALUMINUM COMPANY OF CANADA, LIMITED and EMPIRE STEVEDORING COMPANY, LTD.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THIRD-PARTY RESPONDENT EMPIRE STEVEDORING COMPANY, LTD. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Court of Appeals was reported at No. 84-7712 (2d Cir. January 23, 1985) and is set forth in the Appendix of the Petition pp. A1 to A2. The decision of the United States District Court for the Southern District of New York dated June 29, 1984 is not officially reported and appears in the appendix of the Petition pp. A3 to A12.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

Are the lower federal courts in disaccord as to whether federal or state due process standards govern the constitutional limits of in personam jurisdiction in federal question cases?

Did the District Court in fact find that the New York long arm statute is unconstitutional?

Constitutional and Statutory Provisions Involved

The pertinent provision of the U.S. Constitution (Amendment V) and the New York Long Arm Statute N.Y. C.P.L.R. Sec. 302 are set forth in the Petition at pp. 2-3.

Statement

The facts are set forth in the District Court opinion (Petition pp. A3 to A12) and will not be repeated here at length. In short, insofar as EMPIRE STEVEDORING COMPANY, LTD. (hereinafter EMPIRE) is concerned, it is alleged that EMPIRE placed hatch beams at the No. 2 upper 'tween deck hatch of the M.V. KAPTAI after loading at Montreal, and further that these beams were improperly placed due to the negligence, breach of contract, and/or breach of warranty of EMPIRE, and that thereafter, after additional loading at Port Alfred, Philadelphia, and Baltimore, while the vessel was at New York, plaintiff fell through the hatch boards at No. 2 upper 'tween deck and was killed as a result of the improper placement of the hatch beams by EMPIRE.

EMPIRE moved in the District court to dismiss the third party complaint against it on jurisdictional grounds since it was a Canadian corporation without any office or agent in New York, and since it neither does nor solicits business there, and has no property (real or personal) in New York. Defendant and Third Party

Plaintiff-Petitioner opposed the motion on the ground that EMPIRE was subject to the jurisdiction of the Court based on Section 302(a) (3) (ii) of the New York Civil Practice Law & Rules (CPLR). The District Court found that jurisdiction over EMPIRE could not be exercised under CPLR 302(a) (3) (ii) when read in conjunction with the due process clause of the United States Constitution and accordingly dismissed.

The U.S. Court of Appeals for the Second Circuit affirmed.

ARGUMENT

I.

There is no disaccord as to whether Federal or State standards govern the Constitutional limits of in personam jurisdiction in Federal question cases.

Petitioner claims that the lower Federal Courts are in complete disaccord as to whether a Federal or State standard governs the Constitutional limits of in personam jurisdiction in Federal question cases—that is, whether the defendant's contacts with the U.S. as a whole (Federal) or only its contacts with the individual state (State) govern the due process question. But there is no such disaccord.

Petitioner cites only four cases in support of its position; one from the Third, one from the Ninth, one from the Second, and one from the First Circuit. But these cases are all easily reconcilable on their facts.

In the Third Circuit case, *DeJames* v. *Magnificence Carriers, Inc.*, 654 F.2d 280 (3rd Circuit) *cert. denied*, 454 U.S. 1085 (1981), and the Ninth Circuit case, *Hedrick* v. *Daiko Shoji Co., Ltd., Osaka*, 715 F.2d 1355 (9th Cir. 1983), the Courts applied a state standard because in personam jurisdiction was based solely on a state long arm statute.

On the other hand, in the Second Circuit case, *Leasco Data Processing Equipment Corp.* v. *Maxwell,* 468 F.2d 1326 (2d Cir. 1972), the basis of in personam jurisdiction was Sec. 27 of the Securities Exchange Act, a wholly Federal statute, and accordingly the Court used a Federal standard, since no state statute was involved in the in personam jurisdiction question. *Leasco,* cited *supra,* 468 F.2d 1326, 1339-1340. Similarly, in the First Circuit case, *Trans-Asiatic Oil Ltd. S.A.* v. *Apex Oil Company,* 743 F. 2d 956 (1st Cir. 1984), the basis of in personam jurisdiction was Rule B of the Federal Rules of Civil Procedure, again a whole Federal statute, and again, the Court used a Federal standard, since no state statute was involved.

The distinction, therefore, appears clear. Where in personam jurisdiction, even in a Federal question case, is based on a state long arm statute, a state standard is applied. Where the basis of in personam jurisdiction is a Federal statute or rule, a Federal standard is applied.

There is therefore, no disaccord. Even if there were, however, this would be an unlikely case for review by the U.S. Supreme Court, because at no time has the petitioner made even the remotest factual showing that application of a Federal rather than a State standard would result in a different result here. Indeed, it would not, since respondent EMPIRE's contacts with the U.S. as a whole, are no greater than those it has with the State of New York.

II.

There was never any finding that New York's long arm statute was unconstitutional.

Petitioner's fears as to the consequences of the lower Courts' decision in this case as regards the constitutionality of the New York long arm statute are groundless. There was never any finding in the lower Courts that New York's long arm statute was

unconstitutional. The lower Courts simply found that it was subject to the requirements of Constitutional due process and that on the facts of this case, due process requirements barred an exercise of in personam jurisdiction over Respondents.

New York Courts have recognized that due process standards are determinative of whether a nonresident is amenable to suit under New York's long arm statute. *Martinez* v. *American Standard*, 91 A.D.2d 652, 457 N.Y.S.2d 97 (2d Dep't 1982), aff'd 60 N.Y.2d 873, 458 N.E. 2d 826, 470 N.Y.S.2d 367 (1983). Accordingly, the lower Courts here have not gone beyond a proposition recognized already by the Courts of New York.

Conclusion

It is respectfully submitted that this petition for a writ of certiorari should be denied.

Dated: New York, New York
May 20, 1985

Respectfully submitted,

VICTOR S. CICHANOWICZ
Counsel for Respondent
Empire Stevedoring Company, Ltd.
Cichanowicz, Callan, Carcich & Keane
80 Broad Street
New York, New York 10004
(212) 344-7042

Of Counsel

MICHAEL J. CARCICH
CICHANOWICZ CALLAN
CARCICH & KEANE